



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Strategic Analysis, Inc.

File: B-270075; B-270075.4

Date: February 5, 1996

James D. Bachman, Esq., and Alexander T. Bakos, Esq., Doyle & Bachman, for the protester.

Elward L. Saul, Esq., Department of the Navy, for the agency.

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DIGEST

1. Record does not demonstrate that awardee intentionally misrepresented status of proposed key employee as employee rather than consultant, where there is no evidence that awardee was aware that the individual had been sent, and signed, a consultant agreement rather than an employment agreement, and the individual clearly agreed to employee status prior to award.
2. Protest that agency improperly held discussions (on limited matters) only with awardee will not be sustained where protester does not establish prejudice by showing that it would have altered its proposal to its competitive advantage had it been included in discussions.
3. Evaluation of proposals was reasonable where information provided by awardee in response to agency's questions demonstrated that awardee's proposal met the requirements of the solicitation.

DECISION

Strategic Analysis, Inc. (SAI) protests the award of a contract to Management Resources, Inc. (MRI) under request for proposals (RFP) No. N00014-95-R-0001, issued by the Office of Naval Research for personnel and facilities to provide management, administrative and technical assistance to the Joint Directors of Laboratories. SAI complains that the award was improper because (1) MRI misrepresented the status of one of its key personnel; (2) the agency improperly held discussions only with MRI; and (3) the evaluation was unreasonable.

We deny the protest.

The RFP, issued as a small business set-aside on March 21, 1995, contemplated the award of a cost-plus-fixed-fee contract to the offeror whose proposal represented

the best value to the government. The RFP listed three evaluation factors in descending order of importance: technical approach, qualifications, and cost. The qualifications factor was comprised of three equally weighted subcriteria: personnel, corporate experience, and corporate resources. The solicitation required offerors to provide the resumes of personnel proposed as key personnel for the job categories supervisory scientist/engineer, senior analyst, and mid-level analyst. If the proposed personnel were not currently employed by the offeror, the offeror was required to provide, with its proposal, a letter of intent which showed that the person would accept employment if the offeror was awarded the contract. The solicitation also required that the contractor have a conference room that could accommodate 50 people, and was a minimum size of 400 square feet.

Seven offerors, including SAI and MRI, submitted proposals by the May 9 due date for initial offers. MRI's proposed cost was second low (\$1,679,039) and SAI's was fifth low (\$2,048,807). The technical evaluation team (TET) rated the technical proposals and determined that those submitted by SAI and MRI were technically superior to the others received. Both offerors were rated exceptional under the technical approach factor and fully qualified under each of the qualifications subfactors. However, the TET was not sure of the employment status of two of MRI's proposed key personnel, Mr. Siewert, the supervisory engineer, and Mr. Reidy, the mid-level analyst. Since MRI stated that it had a 50-person conference room, but did not indicate its size, the TET also was unclear as to whether the room was 400 square feet, as required. The agency sent letters to MRI to request MRI to clarify these points. In response, MRI stated that Mr. Siewert was a part-time employee and submitted an employment agreement signed by him; submitted a contingent employment agreement signed by Mr. Reidy; and provided dimensions showing that its conference room was larger than 400 square feet. The agency found these responses satisfactory.

After reviewing the evaluation results, the contracting officer determined that SAI's technical proposal was superior to MRI's, but that it was not worth an additional \$369,768 (\$74,000 annually). As a result, she made award to MRI on an initial proposal basis.

MISREPRESENTATION

SAI argues that MRI misrepresented the employment status of its supervisory engineer, Mr. Siewert, in its initial proposal and in subsequent communications with the agency. SAI argues that this misrepresentation was improper in itself, and led the agency falsely to believe that MRI qualified as a small business (since proposing Mr. Siewert as a consultant instead of as an employee allegedly would have violated the RFP's subcontracting limit).

The record does not establish that MRI intentionally misrepresented Mr. Siewert's employment status or otherwise engaged in malfeasance. In its initial proposal, MRI submitted a resume which indicated that Mr. Siewert was employed by MRI from "1995-Present." The TET questioned this information because SAI also proposed Mr. Siewert for a position in its proposal, and because DCAA advised the agency that it did not have a labor rate for Mr. Siewert as an employee of MRI. The agency thus asked MRI to clarify Mr. Siewert's employment status. On August 2, MRI responded that Mr. Siewert was a part-time MRI employee. MRI also provided a signed employment agreement dated April 7.

At SAI's post-award debriefing, SAI questioned the employment status of Mr. Siewert and the agency asked MRI to provide SAI with a copy of the April 7 employment agreement. MRI responded on October 3 by providing the agency with a copy of a professional services agreement (PSA) Mr. Siewert had signed on April 17, in which Mr. Siewert agreed to provide consultant services to MRI, a copy of the April 7 employment agreement, and an October 3 employment agreement signed by Mr. Siewert. MRI also provided a statement (further explained in October correspondence with the agency) explaining these different documents. MRI's president stated that, during discussions with Mr. Siewert on April 3, he agreed to come to work for MRI. The president then instructed an employee to send Mr. Siewert an employment agreement. On August 1, while attempting to respond to the agency's July 26 inquiry into the employment status of Mr. Siewert, the president looked for the employment agreement, and realized for the first time a PSA rather than an employment agreement had been sent to, and had been signed by, Mr. Siewert. The president phoned Mr. Siewert and asked him to become an employee. He agreed to be a part-time employee and also agreed at this time that MRI could inform the Navy of the change in his employment status. At that time, MRI prepared and signed for Mr. Siewert the April 7 employment agreement, intending it to replace the April 17 PSA, but inadvertently dating it April 7. Mr. Siewert was supposed to sign the agreement for himself when he was at the office but that was not done until October 3. The president of MRI states that she would never have proposed a consultant for a key position.

While MRI furnished the April 7 agreement with knowledge that it was not genuine, the facts indicate that it did so not to mislead the agency or to misrepresent Mr. Siewert's status, but to correct a mistake that occurred when Mr. Siewert inadvertently was furnished a PSA to sign instead of an employment agreement. Mr. Siewert's own statement is consistent with MRI's president's account of the facts. Most significantly, while Mr. Siewert states that he initially was engaged by MRI as a consultant, he does not state that MRI's president did not discuss his being employed by MRI, or provide any other information suggesting that MRI's president was aware in April that he had been hired as a consultant rather than as an employee. Also, he states that he did in fact agree to employment by MRI in August, and that he also at that time agreed to have MRI represent to the agency

that he was an MRI employee. (Thus, the record shows that MRI's "forgery" of Mr. Siewert's signature--SAI's characterization--on the employment agreement in fact was authorized by Mr. Siewert.) The proper course for MRI would have been to advise the agency of the circumstances rather than to create a replacement document. However, since the record shows that the document was created to reflect the parties' intent in April; that the document does reflect MRI's intent; and that Mr. Siewert agreed to employment by MRI in August, prior to award, MRI's actions do not warrant upsetting the award.

DISCUSSIONS

SAI protests that MRI's initial proposal did not comply with the mandatory RFP requirements regarding the employment status of two key personnel and the size of the conference room, and that the agency's questions to MRI, which permitted MRI to correct these deficiencies in its proposal, therefore constituted discussions. SAI therefore asserts that the agency violated procurement regulations by holding discussions with MRI, but not with any other competitive range offeror. The agency argues that the information requested falls under the category of clarifications and that it was not required to hold discussions with all offerors in the competitive range.

Discussions occur when the government communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or provides the offeror with an opportunity to revise or modify its proposal. Federal Acquisition Regulation § 15.601. In contrast, clarifications are merely inquiries for the purpose of eliminating minor uncertainties or irregularities in a proposal and do not give an offeror the opportunity to revise or modify its proposal. Id. If a procuring agency holds discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. See HFS, Inc., B-248204.2, Sept. 18, 1992, 92-2 CPD ¶ 188.

We agree with SAI that the agency's communication with the awardee with regard to Mr. Reidy's employment status constituted discussions. The solicitation specifically required offerors to provide letters of intent for proposed key personnel not currently employed by the offeror. MRI's proposal did not show that Mr. Reidy was a current employee and did not include a letter of intent for him. The proposal therefore was unacceptable in this regard, and since the communication with MRI was necessary to establish Mr. Reidy's employment status, it constituted discussions.¹

¹It is not as clear that the communication regarding Mr. Siewert constituted discussions, since MRI's proposal showed that he was a current employee, and
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Since the agency held discussions with MRI, it was required to hold discussions with all competitive range offerors. HFS, Inc., supra. However, we will not sustain SAI's protest on this basis, since SAI has not established a reasonable possibility of prejudice; SAI has not shown, and on this record there is no reason to believe, that its competitive position would have been improved through discussions. See Marwais Steel Co., B-254242.2; B-254242.3, May 3, 1994, 94-1 CPD ¶ 291.

SAI does not take issue with the evaluation of its proposal or argue that there were deficiencies or weaknesses in its technical proposal, the correction (or otherwise addressing) of which would have improved its evaluation. The record shows, moreover, that the agency found nothing that required correction; SAI's proposal was rated exceptional under the technical approach factor, fully acceptable under the qualifications factor, and overall technically superior to MRI's proposal. The only reason SAI did not receive the award is that its price was considered too high--\$369,768 (\$74,000 per year) more than MRI's. SAI does not argue in its protest that if it had been given the opportunity to do so during discussions it could have or would have reduced its price. Accordingly, there is no basis to conclude that SAI was prejudiced because the agency held limited discussions only with MRI. See Marwais Steel Co., supra.

EVALUATION OF MRI'S PROPOSAL

SAI also challenges the technical evaluation of MRI's proposal. Specifically, SAI argues that the agency relied on MRI's misrepresentation of Mr. Siewert's employment status to evaluate its proposal under personnel and also to find that MRI met a material requirement of the solicitation. SAI also argues that the agency accepted MRI's statement of Mr. Siewert's employment status as well as MRI's statement of the square footage of its conference room without verifying the information.

We have no basis to question the evaluation. In response to the agency's questions, MRI provided information showing that Mr. Siewert was an employee, and that the dimensions of its conference room met the 400-square foot requirement. The

¹(...continued)

letters of intent were only required for individuals not currently employed by the offeror.

agency therefore reasonably evaluated MRI's proposal based on Mr. Siewert's qualifications and reasonably determined that MRI met the conference room requirement. There is no general requirement that agencies verify the information presented in proposals, the RFP did not provide that information would be verified, and the agency did not do so with respect to SAI's proposal either. There thus is no basis for objecting to the agency's failure to verify the information in question.

The protest is denied.

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